

SENATE BILL 2584  
By Fowler

AN ACT to amend Tennessee Code Annotated, Section 67-4-2009 and Section 67-4-2109, relative to a research and development tax credit.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following language as a new, appropriately designated subsection:

(g)

(1) As used in this subsection (g), unless the context otherwise requires:

(A) "Commissioner" means the commissioner of revenue;

(B) "Department" means the department of revenue;

(C) "Gross receipts" means gross receipts for any taxable year consisting only of gross receipts which are effectively connected with the conduct of a trade or business within this state. The determination of whether gross receipts are effectively connected with the conduct of a trade or business within this state shall be made by reference to the standard established by the commissioner by rule and regulation;

(D) "Internal Revenue Code" means the Internal Revenue Code of 1986;

(E) "Qualified tax liability" means the liability for taxes imposed under chapter 4, parts 20 and 21 of this title;

(F) "Research and development tax credit" means the credit provided under this subsection;

(G) "Small business" means an entity subject to tax under chapter 4, parts 20 and 21 of this title with net book value of assets totaling, at the beginning or end of the taxable year for which Tennessee qualified research and

development expense is incurred, as reported on the balance sheet, less than five million dollars (\$5,000,000);

(H) "Taxpayer" means an entity subject to tax under chapter 4, parts 20 and 21 of this title;

(I) "Tennessee base amount" means the base amount as defined in §41(c) of the Internal Revenue Code of 1986, except that references to "qualified research expense" shall mean "Tennessee qualified research and development expense" and references to "qualified research" shall mean "Tennessee qualified research and development." References to "fixed base percentage" shall mean the percentage which the Tennessee qualified research and development expense for the four (4) taxable years immediately preceding the taxable year in which the expense is incurred is to the gross receipts for such years. The fixed base percentage for a taxpayer who has fewer than four (4) but at least one (1) taxable year shall be determined in the same manner using the number of immediately preceding taxable years to arrive at the percentage;

(J) "Tennessee qualified research and development" means qualified research and development as defined in § 41(d) of the Internal Revenue Code of 1986 that is conducted in this state; and

(K) "Tennessee qualified research and development expense" means qualified research expense as defined in §41(b) of the Internal Revenue Code of 1986 incurred for Tennessee qualified research and development.

(2)

(A) A taxpayer who incurs a Tennessee qualified research and development expense in a taxable year may apply for a research and development tax credit as provided in this subsection. By September 15, a taxpayer must submit an application to the department for Tennessee qualified research and development expense incurred in the taxable year that ended in the prior calendar year.

(B) A taxpayer that is qualified under subdivision (A) shall receive a research and development tax credit for the taxable year in the amount of ten percent (10%) of the excess of the taxpayer's total Tennessee qualified research and development expense for the taxable year over the taxpayer's Tennessee base amount.

(C) By December 15 of the calendar year following the close of the taxable year during which the Tennessee qualified research and development expense was incurred, the department shall notify the taxpayer of the amount of the taxpayer's research and development tax credit approved by the department.

(3)

(A) The amount of the research and development tax credit that a taxpayer may use against any one (1) qualified tax liability during any year may not exceed fifty percent (50%) of such qualified tax liability for that taxable year. If the taxpayer cannot use the entire amount of the research and development tax credit for the taxable year in which the research and development tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the research and development tax credit is carried over to a succeeding taxable year, it is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The research and development tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than fifteen (15) taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(B) A research and development tax credit approved by the department for Tennessee qualified research and development expense in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the research

and development tax credit is applied against any tax liability under subdivision

(A).

(C) A taxpayer is not entitled to carryback, obtain a refund of or assign an unused research and development tax credit.

(4) The provisions of § 41 of the Internal Revenue Code and the regulations promulgated regarding those provisions shall apply to the department's interpretation and administration of the credit provided by this subsection. References to the Internal Revenue Code shall mean the sections of the Internal Revenue Code as existing on any date of interpretation of this subsection; provided that if those sections of the Internal Revenue Code referenced in this article are repealed or terminated, references to the Internal Revenue Code shall mean those sections last having full force and effect; provided that if after repeal or termination the Internal Revenue Code sections are revised or reenacted, references herein to Internal Revenue Code sections shall mean those revised or reenacted sections.

(5) In prescribing standards for determining which qualified research and development expense are considered Tennessee qualified research and development expense for purposes of computing the credit provided by this subsection, the department may consider:

(A) The location where the services are performed.

(B) The residence or business location of the person or persons performing the service.

(C) The location where qualified research and development supplies are consumed.

(D) Other factors that the department determines are relevant for the determination.

(6) A taxpayer is not entitled to a research and development tax credit for Tennessee qualified research and development expenses incurred in taxable years ending after December 31, 2006. The termination date in § 41(h) of the Internal Revenue Code of 1986 does not apply to a taxpayer who is eligible for the research and

development tax credit under this subsection for the taxable year in which the Tennessee qualified research and development expense is incurred.

(7) For the purpose of calculating Tennessee qualified research and development expense used in calculating the Tennessee base amount for taxable years ending after 1991 and before 2005, if the taxpayer has incurred qualified research and development expense both inside and outside this state and is unable to determine the amount of Tennessee qualified research and development expense, the taxpayer may calculate Tennessee qualified research and development expense by multiplying qualified research and development expense everywhere by the average of the payroll and property factors calculated in accordance with § 67-4-2111 for the corresponding taxable years in question.

(8)

(A) The total amount of credits approved by the department shall not exceed thirty million dollars (\$30,000,000) in any fiscal year. Of that amount, six million dollars (\$6,000,000) shall be allocated exclusively for small businesses; provided that if the total amounts allocated to either the group of applicants exclusive of small businesses or the group of small business applicants is not approved in any fiscal year, the unused portion will become available for use by the other group of qualifying taxpayers.

(B) If the total amount of research and development tax credits applied for by all taxpayers, exclusive of small businesses, exceeds the amount allocated for those credits, then the research and development tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the research and development tax credit applied for by the applicant divided by the total of all research and development credits applied for by all applicants, the algebraic equivalent of which is:

$$\text{taxpayer's research and development tax credit} = \text{amount allocated for those credits} \times \left( \frac{\text{research and development tax credit}}{\text{total of all research and development credits}} \right)$$

applied for by the applicant/total of all research and development tax credits applied for by all applicants).

(C) If the total amount of research and development tax credits applied for by all small business taxpayers exceeds the amount allocated for those credits, then the research and development tax credit to be received by each small business applicant shall be the product of the allocated amount multiplied by the quotient of the research and development tax credit applied for by the small business applicant divided by the total of all research and development credits applied for by all small business applicants, the algebraic equivalent of which is:

$$\text{taxpayer's research and development tax credit} = \text{amount allocated for those credits} \times \left( \frac{\text{research and development tax credit applied for by the small business}}{\text{total of all research and development tax credits applied for by all small business applicants}} \right).$$

(9) The commissioner shall submit an annual report to the general assembly indicating the effectiveness of the credit provided by this subsection no later than March 15 following the year in which the credits were approved. The report shall include the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved and utilized. The report may also include any recommendations for changes in the calculation or administration of the credit.

(10) The department shall not approve a research and development tax credit under this subsection for taxable years ending after December 31, 2006.

SECTION 2. The commissioner of revenue shall promulgate regulations necessary to effectuate the provision of this act.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years beginning on or after June 30, 2004